



The Comptroller General
of the United States

Washington, D.C. 20548

safe

Decision

Matter of: Omni Elevator

File: B-233450.2

Date: March 7, 1989

DIGEST

1. Contracting officer's decision to withdraw small business set-aside based on price unreasonableness is proper where lowest quote received in response to request for quotations exceeded government estimate by more than 95 percent and protester has not established that government estimate was incomplete or inaccurate.

2. Under a request for quotations, an agency's failure to solicit an incumbent contractor does not constitute an adequate reason to cancel and resolicit, where the incumbent was not deliberately excluded, adequate competition was obtained and the awardee's quote was not unreasonable.

DECISION

Omni Elevator protests the Air Force's decisions to withdraw a small business set-aside under request for quotations (RFQ) No. F41685-88-Q-0794, for elevator maintenance services at Laughlin Air Force Base, Texas, to reissue the same RFQ as an unrestricted solicitation and to award the contract to Dover Elevator, a large business. Omni contends that it is entitled to the contract as the low offeror on the original solicitation and that the Dover contract should be canceled.

We deny the protest.

This RFQ was initially issued as a small business set-aside, on May 13, 1988. The solicitation was distributed to four firms, two of which responded by the due date of May 27. The lowest quote received was Omni's offer of \$3,228, which was 95 percent higher than the government's estimate of \$1,656. On that basis, the contracting officer withdrew the

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set-aside for small businesses and reissued the same RFQ as an unrestricted solicitation. Solicited subsequently were several large businesses which had been excluded earlier on account of the set-aside. Dover was ultimately awarded the contract.

The Air Force contends that the protest should be dismissed because Omni failed to furnish the contracting officer with a copy of the protest within 1 day after filing with our Office. 4 C.F.R. § 21.1(d) (1988). However, dismissal is not warranted in this case because the Air Force had actual knowledge of the protest when it was submitted. See, S.C. Services, Inc., B-221012, Mar. 18, 1986, 86-1 CPD ¶ 266.

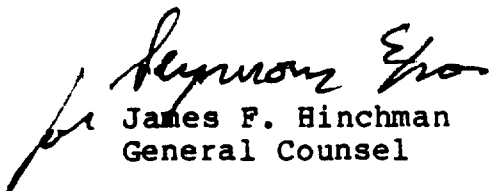
Omni claims that the government estimate was deficient, its own quote was reasonable, and therefore the agency improperly rejected the protester's bid and withdrew the small business set-aside. While the protester objects generally to the government estimate, it provides no evidence to support its objection. A determination that prices are unreasonable is a matter of administrative discretion which we will not question unless it is clearly unreasonable or there is a showing of fraud or bad faith on the part of contracting officials. Nootka Environmental Systems, Inc., B-229837, Apr. 25, 1988, 88-1 CPD ¶ 396. Such a determination may be based on a comparison of the bid price with the government estimate, and we have found cancellation to be justified where the low responsive bid exceeded the government estimate by as little as 7.2 percent. Nationwide Roofing & Sheet Metal Co., Inc., B-231895.2, Oct. 28, 1988, 88-2 CPD ¶ 404. Since there is no evidence of fraud or bad faith and the low quote under the RFQ was 95 percent higher than the government estimate, we see no basis to conclude that the contracting officer's decision to withdraw the small business set-aside and reissue the RFQ as an unrestricted solicitation was unreasonable.

Omni complains also that the agency neglected to provide it with a copy of the reissued solicitation, notwithstanding that it had performed competently on the predecessor contract. The Air Force responds that while its customary practice is to solicit incumbents, neither Omni nor the other original quoters received a copy of the solicitation because of an oversight in the preparation of the second list. The Air Force utilized small purchase procedures which are exempted from the requirement set forth in the Competition in Contracting Act of 1984 (CICA) that agencies obtain full and open competition through the use of competitive procedures when conducting procurements. 10 U.S.C. § 2304(g)(1) (Supp. IV 1986). For purchases of less than \$25,000, these simplified procedures for acquiring goods and

services are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors. To facilitate these stated objectives, CICA only requires that agencies obtain competition to the maximum extent practicable when they utilize the small purchase procedures. 41 U.S.C. §§ 253(a)(1)(A), 259(c) and 403(7) (Supp. IV 1986); Water Resources Education, B-224682, Nov. 28, 1986, 86-2 CPD ¶ 626. In implementing the statutory requirement, the Federal Acquisition Regulation (FAR) requires contracting officers, using small purchase procedures for purchases of more than \$1,000, to solicit quotations from a reasonable number of qualified sources to ensure that the purchase is advantageous to the government, price and other factors considered. FAR § 13.106(b)(1) (FAC No. 84-5). Generally, solicitation of three suppliers is sufficient. See, California Properties, Inc., B-232323, Dec. 12, 1988, 88-2 CPD ¶ 581.

Here, the Air Force obtained three quotations for the work, and from the record before us we have no basis to conclude that Dover's price was unreasonable. Thus, the Air Force's failure to solicit Omni, the incumbent contractor, is not in itself a violation of the requirement to promote competition in small purchases. Compare Bonneville Blue Print Supply, B-228183, Nov. 18, 1987, 87-2 CPD ¶ 492 (agency's failure to provide incumbent contractor with solicitation in a non-small purchase procurement, thereby effectively precluding it from competing for a follow-on contract, violates the CICA mandate for full and open competition). Termination of the contract and resolicitation here would only be warranted where there is a showing that the agency made a deliberate or conscious attempt to preclude the protester from competing. See, Gateway Cable Co., 65 Comp. Gen. 854 (1986), 86-2 CPD ¶ 333. No such showing has been made here.

We deny the protest.


James F. Hinchman
General Counsel